

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	Criminal No. 21cr10028
)	
v.)	Violations:
)	
DURVAN C. LEWIS,)	<u>Count One</u> : Tax Evasion
)	(26 U.S.C. § 7201)
Defendant)	
)	<u>Count Two</u> : Failure to Pay Over Taxes
)	(26 U.S.C. § 7202)

INFORMATION

At all times relevant to this Information:

General Allegations

1. The defendant, DURVAN C. LEWIS, resided in Nantucket, Massachusetts.
2. LEWIS operated a commercial and residential painting business on Nantucket under the name Durvan Lewis Painting, Inc., also known as DCL Painting, Co. LEWIS was the sole owner of DCL Painting.
3. DCL Painting employed numerous individuals.
4. The Internal Revenue Service is an agency of the United States within the Department of the Treasury and is responsible for enforcing and administering the United States' tax laws.

The Federal Tax Requirements

5. LEWIS operated DCL Painting as an S-Corporation. For federal tax purposes, S-Corporations pass corporate income (or losses) through to their shareholders, as well as certain deductions and credits.

6. DCL Painting was required to report to the IRS each year its annual gross receipts or sales, expenses, and resulting income or loss on a Form 1120S, U.S. Income Tax Return for an S Corporation. DCL Painting was not required to pay federal income taxes directly; instead, the company's income (or loss) was passed through to LEWIS for tax purposes.

7. Individual taxpayers generally are required to accurately report each year to the IRS their income and attendant tax obligations on a Form 1040, U.S. Individual Income Tax Return. The IRS uses Form 1040 to assess taxpayers' tax liability. LEWIS and his spouse annually filed Forms 1040 as a married couple filing jointly.

8. As an employer, DCL Painting was also required to collect and pay over federal employment taxes. Federal employment taxes consist of two parts: (a) income taxes withheld from employee wages and (b) Federal Insurance Contributions Act ("FICA") taxes. FICA taxes consist of Social Security taxes and Medicare taxes. For any given employee, one-half of the applicable FICA taxes is withheld from the employee's wages and the other half is paid by the employer. Federal tax law requires employers to account for, collect, and pay over to the IRS both the withheld taxes (i.e., the employee's income tax withholdings and one-half of the FICA taxes) and the taxes owed by the employer itself (i.e., the employer portion of the FICA taxes).

9. Employers are required to report all wages paid to employees and all federal employment taxes on those wages on Form 941, Employer's Quarterly Federal Tax Return. Most employers are required to file Form 941 four times per year, for each quarter ending March 31, June 30, September 30, and December 31. Employers are required to pay over to the IRS the applicable federal employment taxes on the same schedule.

Underreported Gross Receipts & Income

10. During the years 2014 through 2017, DCL Painting's gross receipts were at least \$7.71 million.

11. LEWIS did not deposit all DCL Painting's gross receipts into DCL Painting's business bank account, but instead deposited a portion of the gross receipts into his personal bank account.

12. LEWIS did not report these diverted gross receipts to DCL Painting's tax preparer, who also prepared LEWIS's personal tax returns. In so doing, LEWIS caused DCL Painting's tax preparer to report only approximately \$6.17 million in gross receipts on DCL Painting's Forms 1120S.

13. In turn, LEWIS also caused the tax preparer to prepare Forms 1040 for LEWIS that underreported his income and attendant tax obligations, which forms LEWIS personally signed and submitted in paper form.

14. In total, LEWIS underreported his income tax obligations by \$593,407 for the years 2014 through 2017, which amount he did not pay over to the IRS. The underreporting is summarized in the chart below:

	2014	2015	2016	2017	Totals
Actual Gross Receipts	\$ 2,150,909	\$ 1,818,666	\$ 1,899,864	\$ 1,842,405	\$ 7,711,845
Reported Gross Receipts	\$ 1,883,054	\$ 1,281,632	\$ 1,444,490	\$ 1,562,855	\$ 6,172,031
Unreported Gross Receipts	\$ 267,855	\$ 537,034	\$ 455,374	\$ 279,550	\$ 1,539,814
Additional Tax Due & Owing	\$ 98,361	\$ 205,840	\$ 183,176	\$ 106,030	\$ 593,407

Failure to Withhold Employment Taxes on Wages Paid in Cash

15. For the tax quarter that ended on March 31, 2012, and for each of the following quarters through the one that ended on September 30, 2019, LEWIS caused DCL Painting to pay more than \$5 million of its employees' wages "under the table" by paying the employees in cash. LEWIS and DCL Painting maintained a handwritten "second set of books" memorializing these cash wages.

16. As a result of LEWIS's actions, DCL Painting did not report these cash wages on Forms 941, nor did DCL Painting pay over to the IRS the employment taxes owed on the cash wages. The following chart summarizes the unreported cash wages and the employment taxes owed:

Year	Unreported Cash Wages	Employment Taxes Not Paid
2012	\$ 291,165	\$ 88,223
2013	\$ 621,202	\$ 188,224
2014	\$ 766,365	\$ 232,208
2015	\$ 772,535	\$ 234,078
2016	\$ 636,405	\$ 192,831
2017	\$ 607,891	\$ 184,191
2018	\$ 786,018	\$ 214,583
2019 (Q1-Q3)	\$ 575,486	\$ 157,108
Totals:	\$ 5,057,064	\$ 1,491,445

COUNT ONE
Tax Evasion
(26 U.S.C. § 7201)

The United States Attorney charges:

17. The United States Attorney re-alleges and incorporates by reference paragraphs 1 through 16 of this Information.

18. Between on or about January 1, 2015 and September 2016, in the District of Massachusetts and elsewhere, the defendant,

DURVAN C. LEWIS,

willfully attempted in any manner to evade and defeat income tax due and owing by him to the United States of America for the calendar year 2015 by committing the following affirmative acts, among others: (a) diverting gross receipts from DCL Painting to his personal bank account; (b) failing to inform his tax preparer of the diverted gross receipts; (c) preparing and causing to be prepared, and signing and causing to be signed, a false and fraudulent U.S. Income Tax Return for an S Corporation, Form 1120S, for Durvan Lewis Painting, Inc., reporting gross receipts of \$1,218,632 for the calendar year 2015, which was submitted to the Internal Revenue Service.

All in violation of Title 26, United States Code, Section 7201.

COUNT TWO
Failure to Pay Over Taxes
(26 U.S.C. § 7202)

The United States Attorney further charges:

19. The United States Attorney re-alleges and incorporates by reference paragraphs 1 through 16 of this Information.

20. From on or about October 1, 2014 through on or about January 31, 2015, in the District of Massachusetts and elsewhere, the defendant,


DURVAN C. LEWIS,

a person required to collect, account for and pay over any tax, willfully failed to collect, account for, and pay over to the Internal Revenue Service the federal income taxes required to be withheld and the Federal Insurance Contributions Act taxes due and owing to the United States on behalf of Durvan Lewis Painting, Inc. and its employees for the quarter ending December 31, 2014.

All in violation of Title 26, United States Code, Section 7202.

ANDREW E. LELLING
United States Attorney

By:



JAMES R. DRABICK
Assistant U.S. Attorney

Date: January 25, 2021